

MINUTES
JOINT PUBLIC HEARING
HILLSBOROUGH TOWN BOARD and PLANNING BOARD

Thursday, October 18, 2007

7:00 PM in the Gordon Battle Courtroom of the New Orange County Courthouse

BOARD OF COMMISSIONERS PRESENT: Mayor Tom Stevens, Commissioners Frances Dancy, Mike Gering, Evelyn Lloyd, L. Eric Hallman, Evelyn Lloyd, and Brian Lowen.

PLANNING BOARD MEMBERS PRESENT: Vice Chair Toby Vandemark, Tom Campanella, Edna Ellis, Kate Faherty, Dave Remington, and Barrie Wallace.

STAFF PRESENT: Planning Director Margaret Hauth, Town Attorney Bob Hornik, and Senior Planner Tom King.

ITEM #1: Call to Order.

Mayor Stevens called the public hearing to order at 7:04 p.m. He did not read the Public Charge but noted it would be followed. Mayor Stevens then turned the meeting over to Planning Board Vice Chair Toby Vandemark.

ITEM #2: Master Parks and Recreation Plan revisions.

Margaret Hauth provided highlights of the revised Master Plan, noting staff and Parks and Recreation Board members had put a lot of work into the Plan. She said the original Master Plan was adopted in 1993, and the goals had for the most part remained unchanged:

- to utilize the Town's natural and historic heritage as recreational resources;
- provide resources in every park district;
- meet the recreational needs of the Town's diverse population by providing facilities and programs that offer opportunities to all in a non-discriminatory manner;
- achieve and maintain playing fields, courts, and other facilities for organized sports and fitness;
- provide safe, convenient, and efficient travelways for non-motorized transportation for all people of Hillsborough; and
- actively seek participation and cooperation from all organizations involved in or concerned with the provision of recreational services in Hillsborough.

Ms. Hauth said the updated Master Plan branched out to add exceptions on organized sports which was not in the original Plan, that special emphasis was added to bike and pedestrian access, it added a small section on social equity, it added a section on partnerships, and expanded the section on neighborhoods to address the neighborhoods that had been added to Hillsborough since the 1993 Plan.

Ms. Hauth explained that the inventory of resources was also updated to reflect those added since 1993, and the inventory of resources was compared to the national standards and then updated. She said a Parks and Recreation Summit was held in August and those involved in recreation services or had an interest in such services and activities were invited to talk through various projects and how organizations may overlap.

Ms. Hauth stated this Plan was a dramatic improvement from what was done in 1993, noting a lot of thought and work had gone into the revised Plan by Planner Stephanie Trueblood and the Parks and Recreation Board. She said the Parks and Recreation Board had endorsed the adoption of the revised Plan.

Mr. Hallman stated that the Planning Department, in particular Stephanie Trueblood, and the Parks and Recreation Board had worked incredibly hard and should be commended. He stated that at the Summit, representatives of Orange County and the Eno Mountain State Park stated they had worked on such plans before but had not gotten a product as good as this one with the help of consultants they had paid tens of thousands of dollars to.

ITEM #3: Rezoning Request from the Colonial Inn LLC to correct a zoning error and designate .51 acres on West King Street as Central Commercial rather than Residential-20 (TMBL 4.36.A.4a).

Ms. Hauth stated that the applicant believed this to be a zoning error, and she could find nothing in her records to contradict that. She said the records went back to the 1980's and she could not find that this parcel had ever been zoned anything other than single-family residential. Ms. Hauth said she had received two letters for adjoining property owners opposing the rezoning, from Brian Johnson and Catherine and Matthew Martin of the Martin Law Firm. She said a valid Protest Petition had been received and was sufficient to trigger a super-majority vote from the Town Board should they choose to approve the rezoning. Ms. Hauth said that Stephen Whitlow, representing the applicant, was present this evening.

Mr. Hornik said in Permitted Uses under the Central Commercial District, the combination of use actually meant a combination of any other uses. Ms. Hauth stated that the Town's ordinance allowed for a combination of uses, which meant someone could choose to do, for instance, a bar and a restaurant. She said if one of those happened to be a Conditional Use and one of them required just a site plan review, the project would have to go through the more stringent process. Ms. Hauth said you could not bring in a use that was not permitted either as a special condition or through site plan review.

Commissioner Gering asked for an elaboration of why Ms. Hauth believed this was an error rather than just a nonconforming use that persisted over many years. Ms. Hauth said that when the Colonial Inn closed it was reported to be the longest continuous running Inn in North Carolina, with an old menu in the file dating its operation to the 1700's. She said it was a prominent business location on West King Street, and it would be difficult to imagine that a Planning staff could bring forward a Zoning Map and not realize that use was there. Ms. Hauth said that was not to say that there was some thought given or a decision that commercial zoning was inappropriate at that site, but there was no documentation to support that. She said it was not usually the intent of the Zoning Map to create nonconformities.

Commissioner Gering said perhaps it was not appropriate for R-20 zoning, but that did not imply that Central Commercial would be the proper zone. Ms. Hauth agreed.

Mr. Hornik stated that regardless of whether or not there was an error, this was a general use district rezoning and the standards of the Board still applied as to whether this particular property was suitable for all of the uses permitted in the Central Commercial district. Ms. Hauth agreed, noting whether or not there was proof on record that it was an error made no difference, since that was not a standard that you would use. She said that argument had been offered by the applicant in support of the rezoning request.

Commissioner Gering asked if this was a quasi-judicial or legislative process. Mr. Hornik stated it was legislative in that it was a general use rezoning.

Stephen Whitlow, representing the owner of the Colonial Inn, stated the rezoning request was being sought for a number of reasons:

- The Colonial Inn was built as a commercial property, and throughout the vast majority of its history had operated as such. This rezoning would allow the property to return to its historic commercial use.
- For reasons that were not clear, this property had been given an inappropriate R-20 zoning in 1986, even though the property at that time was operating as a commercial venture and continued to do so well into the 1990's. The Town's Planning staff believes that the R-20 zoning was a mistake or a clerical error and inappropriate, and a rezoning to Central Commercial would overturn this inappropriate R-20 zoning.
- A rezoning was appropriate given that the property abuts an existing Central Commercial property, and was less than 200 feet from the King Street commercial corridor.
- A conversion to a Central Commercial zoning would increase the financial feasibility of the full restoration of the Colonial Inn due to the flexibility of uses that Central Commercial zoning would allow.
- It is the intent of the property owner to restore the Colonial Inn in such a way that it would be beneficial to the Town, that it would be historically appropriate, and that it would be protective of the interests of the neighbors of the Inn.
- Such a restoration offered an opportunity not only to preserve this important property but also to build on the Town's heritage, tourism, and economic development efforts.

Mr. Whitlow said for those reasons, they requested approval of the rezoning.

Commissioner Gering asked Mr. Whitlow to explain how the rezoning would enhance the financial feasibility of restoring the Inn. Mr. Whitlow said it gave a wider array of options that could go on the property. Hypothetically, he said if the owner wanted to put in a restaurant, the only way to achieve that without the rezoning would be to go through the non-residential use in an historic home process. Mr. Whitlow said part of that process meant that the owner would have to attach a preservation easement to the property and the strip of land the Inn sat on. He said that process would cause the value of the property to decrease due to the easements attached to it.

Commissioner Gering asked what the value of the property had to do with the restoration process. Mr. Whitlow said he believed that the property owner was interested in achieving this rezoning in order to be able to analyze the full range of uses and identify the highest and best use for the property, which in turn would allow the Inn to be restored.

Commissioner Gering said the highest and best use may not be as an Inn. Mr. Whitlow said that was correct, noting that there was a range of options that technically could be used although a great many of them were not under consideration by the property owner because they were not financially suitable or would not pass the historic review process.

Syd Alexander, speaking on behalf of Tom Roberts, stated he opposed the rezoning request. He said as an attorney, you had to give deference to the current zoning and that there was nothing in the record

indicating it was an error. Mr. Alexander said Mr. Roberts opposed the rezoning because the owner had not made clear his intent of what he wanted to do with the property, and if the rezoning was allowed there were a number of uses available and they would be powerless to stop it. He said if the zoning was left as is, there was an ability to control the uses of the property. Mr. Alexander said it would ensure that the property owner would have to come back to the Town with a specific plan for the use of the property. Mr. Alexander said the property owner had had the opportunity to do that very thing tonight, but he had not been forthcoming.

Mr. Alexander stated it was their position that if the zoning remained R-20, it afforded some protection as to what the property might be used for. He urged that the rezoning not be approved.

Jim Boericke stated his opposition to the rezoning request. He said the property was intentionally zoned residential and left as R-20 in deference to the neighbors, noting in 1986 all the properties around it were residential. He said at that point the Inn was granted a Conditional Use Permit to continue to operate as an inn and a restaurant. Mr. Boericke encouraged the use of a CUP for non-residential use in an historic house instead.

Barbara Church provided her educational and professional background in the area of historic preservation and architecture. She stated the rezoning would allow uses incompatible with this residential neighborhood in the historic district. Ms. Church said that CUPs were available to the owner that would permit him to do a variety of activities under the current R-20 zoning; a change to Central Commercial was not necessary nor was it desirable. She encouraged the use of a CUP as an option.

Nancy Goodwin stated she had served on the Planning Board in 1986 and as Chair of the committee that reviewed the zoning map. She said that the R-20 zoning was not a mistake, and the committee was well aware of the use of that property and that it was nonconforming. She said the feeling was at that time that if the Inn did not continue in its present use, that it should revert to residential zoning.

Linda Ostrand stated she and her family had moved to Hillsborough in 2005 and had purchased a home directly behind the Colonial Inn. She said they had happened to be at the HDC meeting at the same time the owner of the Inn was applying for his permits in order to put on a new roof and demolish the back of the building in order to begin preservation. Ms. Ostrand said that had sounded like a positive first start. She said in the interim they had been granted permission to begin improvements to their property and were about 85% finished, but they had yet to see any work being performed on the Inn.

Ms. Ostrand said anyone who knows anything about historic restoration realized the importance of acting immediately when you had a property that was that old and in potential demise. She said they had not seen even one thing accomplished on that property other than the leaves being raked, and to her that was a travesty. Ms. Ostrand said she and her husband were opposed to the rezoning, and that there needed to be some element of progress demonstrated by the owner before any permission was granted that would allow him to turn that property into something all of them would regret.

Tom Campanella asked about the relative mechanisms to protect this property between the Central Commercial designation and the Conditional Use designation that would allow commercial functions to operate in the R-20 area. He asked how did the preservation easement that would come into play if this were to be given a Conditional Use compare to the mechanisms available under Central Commercial relative to the State level historic designation that this property had been granted. Ms.

Hauth responded that if an owner grants a conservation or preservation easement, that went to some third party that had no real role to play in approving or disapproving any improvements to the property. She said under the CUP process, that entity held an easement to the exterior, and would need to approve any exterior change in addition to the HDC, as well as the State if tax credits were involved. Ms. Hauth said if there was no third party holding an easement then the HDC would still be reviewing it under current guidelines and if it were a tax credit project the entity supervising that process would be involved. Ms. Hauth said in other words, it added one more player to the mix of who was reviewing exterior changes to the property, and who had to approve those changes.

Mr. Campanella said if the easement would apply to the historic interior of the structure. Ms. Hauth said that was at the discretion of the BOA, in that they would have to decide if the interior was part of what made the building contributing. She said normally their regulations did not reach to the interior, so that would be negotiated during a CUP process, or, they would have to refer to the nomination of the building as an historic structure to see if there was something particular in the interior that added to its ability to be contributing.

Edna Ellis pointed out that according to history the Inn was formerly the Orange Hotel, the Occaneechee Hotel, the Corbinton Inn, and the Colonial Inn, but it had not always had a restaurant. She said the owner had enjoyed the taxes on the Inn as a residentially zoned property for many years. She stated that the Colonial Inn was a "crown jewel" in Hillsborough and it needed to be preserved. She said she did not want to see it put to commercial uses. She said she and many others remembered the Inn as it has once been, and wanted to keep it as an icon for the Town.

Mayor Stevens stated it was a reality that the Town received more questions about the Colonial Inn than any other structure. He agreed absolutely that it was a crown jewel for the Town, but with that in mind he wanted to acknowledge that the applicant had said he wanted to restore it to a historically appropriate use. Mayor Stevens said he wanted to call on the various boards to do whatever possible to not jeopardize their preservation options, but to work cooperatively with the owner so that the Inn could be restored and put to some appropriate use. He said he would like to find a way to put all of those interests together to come to a positive outcome. Mayor Stevens stated that they should keep in mind not just this owner, but the potential owners for the next different use.

ITEM #4: Zoning Ordinance Text Amendment to change 4.41.1.b the outside play area requirement for daycare centers to refer to the State requirement.

Ms. Hauth said this was a request by Ms. Pratt-Walker to amend the Zoning Ordinance to align it with the State requirements. She said the Town's regulations currently required 200 square feet per child of outdoor play area, but the State licensing requirement was 75 square feet or 100 square feet depending on the type of license. Ms. Hauth stated the Planning Board had recommended sending this text amendment to public hearing to delete the requirement for 200 square feet per student and refer solely to the State's requirement for the licensing level being sought by the facility.

Ms. Pratt-Walker stated she would like to see the Town's requirements become more in line with the State's. She said her planned daycare center did not have a proposed number of students as yet, but she could not go forward until this text amendment was approved. Ms. Pratt-Walker asked that the Boards recommend adoption of the text amendment. She added that she believed her facility would enhance the area.

Mayor Stevens stated there was a higher level, 100 square feet per student rather than 75, and asked Ms. Pratt-Walker would she consider that level as reasonable. Ms. Pratt-Walker said she certainly would, noting it was better than 200.

ITEM #5: Zoning Ordinance Text Amendment to delete Section 2.15.

Ms. Hauth said that Section 2.15 was the Planned Unit Development ordinance, which was a very mixed-use district and did not take advantage of the SUP process. She said it would be implemented by the Planning Board or the Board of Adjustment rather than all being implemented at the time of the rezoning request. She said this district did not allow for the flexibility needed, and believed it was wisest to remove it from the Zoning Ordinance.

ITEM #6: Zoning Ordinance Text Amendment to delete Section 2.18 and 5.27.

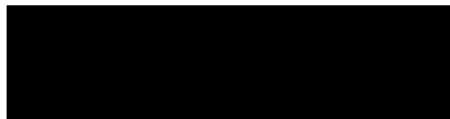
Ms. Hauth stated Section 2.18 and 5.27 would delete the Entranceway Overlay District from the Zoning Ordinance. She said that district and the standards it included envisioned the concept of a service road cross-section on South Churton Street and the US 70 Bypass, and other areas where this ordinance might be applied. Ms. Hauth said the Town had long since changed its mind that this was not desirable for any of our entranceways into the Town. She said it was thought it was better to remove it before someone decided to try to use it.

ITEM #7: Zoning Ordinance Text Amendment to delete “barbershop and beauty salon” permitted uses.

Ms. Hauth stated this was to correct an internal conflict in the Permitted Use Table and the definition of a personal service business. She said in the Permitted Use Table barbershops and beauty salons were allowed in certain districts but personal services were allowed in different districts, thereby creating a conflict. Ms. Hauth said as well, many barbershops and beauty salons operated as more than just hair-cutting services, but provide a much wider range of services that were really personal service and not just the styling or cutting of hair. She said it was felt it was wiser to delete the two from the Permitted Use Table and let those come in as personal services.

ITEM #8: Adjourn.

Upon a motion by Commissioner Gering, seconded by Commissioner Lowen, the Board moved to adjourn the hearing. The vote was unanimous. The meeting was adjourned at 7:52 p.m.



Respectfully submitted,
Donna F. Armbrister, MMC
Town Clerk